

Section 817

SEC. 817. GRANTS OF EXCEPTIONS TO COST OR PRICING DATA CERTIFICATION REQUIREMENTS AND WAIVERS OF COST ACCOUNTING STANDARDS.

(a) GUIDANCE FOR EXCEPTIONS IN EXCEPTIONAL CIRCUMSTANCES -

Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance on the circumstances under which it is appropriate to grant an exceptional case exception or waiver with respect to certified cost and pricing data and cost accounting standards.

(b) DETERMINATION REQUIRED FOR EXCEPTIONAL CASE EXCEPTION OR WAIVER -

The guidance shall, at a minimum, include a limitation that a grant of an exceptional case exception or waiver is appropriate with respect to a contract, subcontract, or (in the case of submission of certified cost and pricing data) modification only upon a determination that --

- (1) the property or services cannot reasonably be obtained under the contract, subcontract, or modification, as the case may be, without the grant of the exception or waiver;
- (2) the price can be determined to be fair and reasonable without the submission of certified cost and pricing data or the application of cost accounting standards, as the case may be; and
- (3) there are demonstrated benefits to granting the exception or waiver.

(c) APPLICABILITY OF NEW GUIDANCE -

The guidance issued under subsection (a) shall apply to each exceptional case exception or waiver that is granted on or after the date on which the guidance is issued.

(d) ANNUAL REPORT ON BOTH COMMERCIAL ITEM AND EXCEPTIONAL CASE EXCEPTIONS AND WAIVERS WITH PRICE OR VALUE GREATER THAN \$15,000,000 -

- (1) The Secretary of Defense shall transmit to the congressional defense committees promptly after the end of each fiscal year a report on commercial item

exceptions, and exceptional case exceptions and waivers, described in paragraph (2) that were granted during that fiscal year.

(2) The report for a fiscal year shall include --

(A) with respect to any commercial item exception granted in the case of a contract, subcontract, or contract or subcontract modification that is expected to have a price of \$15,000,000 or more, an explanation of the basis for the determination that the products or services to be purchased are commercial items, including an identification of the specific steps taken to ensure price reasonableness; and

(B) with respect to any exceptional case exception or waiver granted in the case of a contract or subcontract that is expected to have a value of \$15,000,000 or more, an explanation of the basis for the determination described in subsection (b), including an identification of the specific steps taken to ensure that the price was fair and reasonable.

(e) DEFINITIONS- In this section:

(1) The term 'exceptional case exception or waiver' means either of the following:

(A) An exception pursuant to section 2306a(b)(1)(C) of title 10, United States Code, relating to submission of certified cost and pricing data.

(B) A waiver pursuant to section 26(f)(5)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(5)(B)), relating to the applicability of cost accounting standards to contracts and subcontracts.

(2) The term 'commercial item exception' means an exception pursuant to section 2306a(b)(1)(B) of title 10, United States Code, relating to submission of certified cost and pricing data.